

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1898.

No. 140. 232.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE BOWE
HARRIS, RUSSELL BLEECKER, AND MARK BAGGAL-
LEY, APPELLANTS,

vs.

GEORGE R. BIDWELL, COLLECTOR OF CUSTOMS FOR
THE PORT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1899.

(17,325.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 740.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE ROWE
HARRIS, RUSSELL BLEECKER, AND MARK BAGGAL-
LEY, APPELLANTS,

vs.

GEORGE R. BIDWELL, COLLECTOR OF CUSTOMS FOR
THE PORT OF NEW YORK.

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1 Circuit Court of the United States, Southern District of New York.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE ROWE Harris, Russell Bleecker, and Mark Baggalley <i>against</i> GEORGE R. BIDWELL.	}	In Equity.
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To the honorable the judges of the circuit court of the United States in and for the southern district of New York:

William J. Cruickshank, Montague Hope Rowe Harris, Russell Bleecker and Mark Baggalley, copartners doing business in the city of New York, State of New York, bring this their bill of complaint against George R. Bidwell.

I. And thereupon your orators complain and say that the said defendant George R. Bidwell is, and at all the times hereinafter mentioned was, the collector of customs of the United States for the port of New York.

2 II. That your orators are copartners engaged under the firm name of Mourilyan, Heimann & Co. in importing teas from Japan into the United States. That Russell Bleecker, one of the complainants above named, is a citizen of the United States, residing in the State of New York.

III. That heretofore and during the month of November, 1897, your orators imported into the United States, and entered at the custom-house at the port of New York, the several invoices of tea on the several dates hereinafter set forth, and thereupon, as to each invoice, applied to the defendant as collector of customs at the said port, for permission to take possession of said goods, and thereupon said collector, as to each and every of said invoices of goods hereinafter set forth, refused to permit these orators to take possession of the same, but retained the same in his own possession, claiming and pretending that he was thereunto authorized by the provisions of an act of Congress, approved March 2, 1897, and entitled "An act to prevent the importation of impure and unwholesome tea."

IV. Your orators further show that the said defendant continues to refuse to release the said goods from his possession, and to permit or allow your orators to take possession of the same, and your orators further allege that the said defendant claims and pretends that he is entitled so to refuse to permit your orators to take possession of said teas and to dispose of the same, on the ground that samples of said teas, of each of said several invoices hereinafter set forth, have been taken by examiners appointed under the alleged authority of the said act of Congress, and compared with certain other samples of other teas selected by the Secretary of the Treasury of the United States, and set up as standard samples of teas under the alleged authority of the said act of Congress, and that the samples so taken from the said teas hereinafter set forth were inferior in

3 some or all of the respects designated in said act of Congress,
 either as to purity, quality or fitness for consumption, to the
 standards so prescribed by said Secretary of the Treasury of
 the United States.

V. Your orators further allege that the said defendant claims the right to retain said teas for the period of six months, and thereupon to cause the same to be destroyed, and the said defendant demands of your orators that they shall give security satisfactory to the defendant that if said teas shall be released to them, your orators, they will forthwith export the said teas out of the limits of the United States, and will submit the invoices and various papers relating to said teas to be marked by the said defendant as teas "condemned under the laws of the United States."

VI. Your orators further allege that the several invoices of teas hereinbefore referred to are more particularly described as follows:

First. 16,500 pounds of tea in 250 half chests, imported in ship *Braemar* and entered at the custom-house November 11, 1897, under the number 179,101, and now in the warehouse No. 582 Water street, in the city of New York, in the custody of the said defendant, under bond that the same shall not be released without the permission of the said defendant, and that the said 250 half chests are marked as follows:

H K # 738/741, 100 hfc.

H R # 742/745, 100 "

H L # 746/747, 50 "

Second. 14,255 pounds of tea in 216 half chests, imported in ship *Olympia* and entered at the custom-house November 15, 1897, under the number 180,811, and now in the warehouse No. 192-194 Cherry street, in the city of New York, in the custody of the said
 4 defendant, under bond to the United States that the same shall not be released without the permission of the defendant.
 The said half chests are marked as follows:

H Y 750/753, 100 hfc.

H P 754/758, 116 "

Third. 16,000 pounds of tea in 225 half chests, imported in the ship *Frey*, and entered at the custom-house November 13, 1897, under the number 179,936, and now in the warehouse No. 192-194 Cherry street, in the city of New York, in the custody of the said defendant under bond to the United States that the same shall not be released therefrom without the permission of the defendant. That the marks upon said half chests are as follows:

DC 329/330, 50 hfc.

DD 331/332, 50 "

ELEPHANT 333/337, 125 "

Fourth. 2,450 pounds of tea in 35 half chests, imported in the ship *Benalder*, and entered at the custom-house November 19, 1897, under the number 183,587, and now in the warehouse No. 192-194 Cherry street, in the city of New York, under bond to the United

States that the same shall not be released without the permission of the said defendant. That the marks on said half chests are as follows:

JAF # 1.

Fifth. 27,664 pounds of tea in 408 half chests, imported in the ship *Macduff*, and entered at the custom-house December 31, 1897, under the number 207,994, and now in the warehouse No. 582 Water street, in the city of New York, in the custody of the said defendant, under bond to the United States that the same shall not
5 be released therefrom without permission of the defendant. That the marks upon said half chests are as follows:

			GY # 89,	20 hfe.
			" 90 / 1	55 "
K	W	M	92 / 6,	134 "
R	N	Y	97 / 101,	135 "
C	O	M	103,	11 "
			" 104,	3 "
			" 105,	5 "
X	P	X	106,	20 "
			" 107,	10 "
			" 108,	15 "

VII. And your orators further show that the value of said teas is, as to each of the first three invoices and the fifth invoice, more than one thousand dollars for each of said invoices, and as to the fourth of said invoices, more than one hundred dollars.

VIII. Your orators further show that your orators claim and insist that the said act of Congress, approved March 2, 1897, and entitled "An act to prevent the importation of impure and unwholesome tea," is in all respects null and void, and of no effect, for the reason that the same is contrary to the provisions of the Constitution of the United States, in that said act purports to delegate to the Secretary of the Treasury power and authority to legislate as to the quality, purity and fitness for consumption of the teas imported by your orators, and to authorize the defendant to seize, hold and destroy said teas, and deprive your orators of their property in the same without due process of law, and that in this suit the matter in dispute, to wit, the value of the said teas, and the right to import
6 teas, exclusive of interests and costs, exceeds the sum or value of two thousand dollars, and the suit arises under the Constitution and laws of the United States.

IX. And your orators further show, that by reason of the matters hereinbefore set forth and the insistence of the defendant that he is entitled to hold possession and control of the said goods under authority of the said act of Congress, for the reason that the said examiners, after examination made pursuant to said statute, have declared the said teas to be inferior in the respects set forth in the said act of Congress, or some of them, to the standards fixed and selected by the Secretary of the Treasury, your orators will suffer

irreparable damage; that the insistence of the defendant of his right to stamp the invoices and papers relating to the importation of said teas, as condemned under the laws of the United States, render- the said teas worthless for export, and entry or sale in markets of other countries, and that the said claim of the defendant, that the said teas cannot be lawfully taken from the said warehouses, render- the said teas unsalable and worthless in the market, for the reason that dealers will not purchase or handle the said goods under the cloud or threat of illegality regarding the same, created by such insistence and claim on the part of the defendant.

X. Your orators further show that your orators purpose and intend to import from time to time other invoices of teas into the United States, and that the said defendant threatens and intends to seize and hold such teas, and take possession and control of the same, and refuse your orators possession of the same, in the same manner and under the same claim of authority of said act of Congress, as the said defendant has heretofore made and set up with regard to the teas hereinbefore set forth, and that your orators' right to import and deal in teas is thereby destroyed and taken away.

7 XI. Your orators further show and allege that your orators do not set up or allege as ground for denying the right of the defendant so to hold and deal with said teas, as hereinbefore set forth, any defect, omission, or irregularity in the proceedings by the examiners and appraisers with regard to said teas, but solely on the ground that the act of Congress hereinbefore referred to, approved by the President March 2, 1897, and entitled "An act to prevent the importation of impure and unwholesome tea," is unconstitutional and void, and confers no authority upon the defendant, and creates no right in the defendant to refuse to permit your orators to take possession of the said teas and introduce them into, and sell them in the, United States.

XII. Your orators further show that they have complied in all respects with the requirements of law as to the entry of said teas in the custom-house at the port of New York, and there is no further act required by law of your orators to entitle them to so take possession and dispose of the same, and that your orators are without any adequate remedy at law.

XIII. Your orators further complain and say that forasmuch as your orators can have no adequate relief, except in this court, and to the end, therefore, that the defendant may, if he can, show why your orators should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged; but not under oath, an answer under oath being hereby expressly waived.

8 XIV. And your orators further pray that a provisional or preliminary injunction be issued restraining the said defendant from continuing to hold possession of the said teas, as hereinbefore set forth, and from refusing to permit your orators to

take possession of the same and withdraw the same from the said warehouses, and from marking or stamping the invoices and papers relating to the importation thereof with the words, "Condemned under the laws of the United States," or any words to that effect, and from destroying the said teas, and from exercising any alleged right, possession or authority relating to or concerning the said teas, purporting to be conferred or created or authorized by the said act of Congress entitled "An act to prevent the importation of impure and unwholesome tea," and for such other and further relief as the equity of the case may require, and to your honors may seem meet.

May it please your honors to grant unto your orators, not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpoena of the United States of America, directed to the said George R. Bidwell, commanding him on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

DAVENPORT & BULL,

*Solicitors for Complainants and of Counsel,
30 Broad Street, Borough of Manhattan,
the City of New York.*

UNITED STATES OF AMERICA, } ss:
Southern District of New York,

On this 7th day of February, 1898, before me personally appeared William J. Cruickshank, one of the complainants above named, who being by me duly affirmed, deposes and says: That he is one of the complainants above named; that he has read the foregoing bill of complaint and knows the contents thereof, and that

9

the same is true of his own knowledge.

WILLIAM J. CRUICKSHANK.

Affirmed and subscribed before me this 7th day of February, 1898.

A. E. HASKINS,
Notary Public, Kings Co.

Cert. filed in New York Co.

Circuit Court of the United States, Southern District of New York.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE ROWE HARRIS, RUS- }
sell Bleecker, and Mark Baggalley }
against }
GEORGE R. BIDWELL.

COUNTY OF NEW YORK, ss:

William J. Cruickshank, being duly sworn, says: I am one of the complainants in the above-entitled action. I have read the bill of complaint herein and know the contents and the same are true.

Deponent further says, that the matters set out in the bill of com-

plaint in this action and the action of the collector in enforcing said act therein referred to, tends to and will destroy the complainants' right to import teas and that said right is of the value of more than ten thousand dollars.

W. J. CRUICKSHANK.

Sworn to before me this 7th day of February, 1898.

A. E. HASKINS,
Notary Public, Kings Co.

Cert. filed in New York Co.

10 Circuit Court of the United States, Southern District of New York.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE, ROWE HARRIS, }
Russell Bleecker, and Mary Baggalley }
against
GEORGE R. BIDWELL.

You are hereby notified that upon the bill of complaint and the affidavit of William J. Cruickshank in the above-entitled action (of which copies are herewith served upon you) a motion will be made at a stated term of the circuit court of the United States, for the southern district of New York, to be held at the court-house of said court, in the post-office building, in the borough of Manhattan, in the city of New York, room 124, on the 18th day of February, 1898, at 10½ o'clock in the forenoon, or as soon thereafter as counsel can be heard, that a preliminary writ of injunction issue herein as prayed for in the bill of complaint, and for such other and further relief as may be just and proper.

Dated New York, February 7, 1898.

DAVENPORT & BULL,
*Solicitors for Complainants, 30 Broad Street, Borough of
Manhattan, the City of New York.*

(Endorsed:) Circuit court of the U. S., southern district of New York. William J. Cruickshank *et al.* vs. George R. Bidwell. Notice of motion. Davenport & Bull, attorneys for complainants, 30 Broad St., New York city. U. S. circuit court. Filed Apr. 20, 1898. John A. Shields, clerk.

11 United States Circuit Court, Southern District of New York.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE, ROWE }
Harris, Russell Bleecker, and Mark Baggalley } *In Equity.*
against
GEORGE R. BIDWELL.

To the clerk of the U. S. circuit court, southern district of New York.

SIR: You will please enter my appearance in behalf of the defendant in the above-entitled action.

Yours, &c.,

HENRY L. BURNETT,
U. S. Attorney, S. D. N. Y.

March 7, 1898.

(Endorsed :) U. S. circuit court, southern district of New York. Wm. J. Cruickshank & *al. versus* Geo. R. Bidwell. Notice, &c. Henry L. Burnett, United States attorney, attorney for defendant. To cl'k U. S. circuit ct., S. D. N. Y. U. S. circuit court. Filed Mar. 7, 1898. John A. Shields, clerk.

12 United States Circuit Court, Southern District of New York.

WILLIAM J. CRUICKSHANK and Others }
vs.
 GEORGE R. BIDWELL, Collector of the Port. }

Motion for preliminary injunction.

LACOMBE, *Circuit Judge* :

The act which plaintiff criticises in this case is apparently framed, as are the exclusion acts, in conformity with prevailing theories, to leave the decision of disputable questions with an administrative officer rather than with the courts. Such a system is of course open to abuse, but it is not necessarily in all cases unconstitutional. No citizen of the United States has a vested right to import teas if Congress under its power to regulate commerce prohibits their importation. And if that body chooses to admit only those teas which may be approved by such administrative officer as it selects, the legislation is similar to that which gives to an administrative officer the power to determine finally whether an alien has or has not sufficient property to be allowed to enter.

In view of the decisions of the U. S. Supreme Court in *Lem Moon Sing v. U. S.*, 158 U. S., 538, and a line of similar cases, such
 13 legislation seems not to be obnoxious to the objection that it is unconstitutional.

Motion denied.

(Endorsed :) Circuit court of the United States for the southern district of New York. William J. Cruickshank & o'rs *vs.* George R. Bidwell, collector of the port. Opinion. Lacombe, C. J. U. S. circuit court. Filed Mar. 30, 1898. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

WILLIAM J. CRUICKSHANK and Others }
vs.
 GEORGE R. BIDWELL. }

Motion having come on to be heard herein before Hon. E. Henry Lacombe, justice of this court, on the 18th day of March, 1898, for a preliminary injunction restraining the above defendant, collector of the port of New York :

Now, on hearing John S. Davenport, of counsel, in support of the said motion, and Henry L. Burnett, United States attorney (Arthur M. King, assistant United States attorney, of counsel), in opposition thereto, and on the bill of complaint, the affidavit of William J.

Cruickshank, the affidavits of Isaac McGay and others, and on all the papers and proceedings herein, and due deliberation being had thereon, it is

- 14 Ordered, that the motion for a preliminary injunction be and the same hereby is denied.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed :) United States circuit court, southern district of New York. William J. Cruickshank and others vs. George R. Bidwell. Order denying motion for preliminary injunction. Henry L. Burnett, United States attorney. Filed Apr. 1, 1898.

- 15 Circuit Court of the United States, Southern District of New York.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE ROWE HARRIS,
Russell Bleecker, and Mark Baggalley, Plaintiffs, }
vs.
GEORGE R. BIDWELL, Defendant. }

The demurrer of the above-named defendant, George R. Bidwell, collector of customs for the district of New York, to the bill of complaint of the above-named plaintiffs sheweth :

I. That it appeareth by the plaintiffs' own showing by the said bill that they, the said plaintiffs, are not entitled to the relief prayed for by the bill against this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

HENRY L. BURNETT,
*United States Attorney and Solicitor and Counsel
for the Defendant Bidwell.*

- 16 I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.
New York, March 31, 1898.

HENRY L. BURNETT,
Of Counsel for Defendant Bidwell.

STATE OF NEW YORK, }
Southern District of New York, County of New York, ss :

George R. Bidwell, being duly sworn, deposes and says: I am the collector of customs for the district of New York, and in my official capacity am the defendant herein. The foregoing demurrer is not interposed for delay.

G. R. BIDWELL. }

Subscribed and sworn to before me this 31 day of March, 1898.

FRANCIS B. AUTZ,

Notary Public, City & County of New York.

17 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 17th day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: Honorable Alfred C. Coxe, circuit judge.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE ROWE HARRIS, }
Russell Bleecker, and Mark Baggalley, Complainants, }

vs.

GEORGE R. BIDWELL, Defendant.

This cause having come on to be heard upon the bill of complaint herein, and the demurrer having been filed in said cause, and having been argued by counsel for the respective parties, Messrs. Davenport & Bull appearing for complainants and Henry L. Burnett, United States attorney, and Arthur M. King, assistant United States attorney, of counsel for defendant: Now, therefore, in consideration thereof, it is—

Ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows, viz: That the complainants' said bill of complaint be, and the same hereby is, dismissed with costs to the defendant, to be taxed.

(S'g'd)

ALFRED C. COXE, U. S. J.

(Endorsed :) U. S. circuit court. Filed Nov. 21, 1898. John A. Shields, clerk.

18 Supreme Court of the United States.

WILLIAM J. CRUICKSHANK, MONTAGUE }
Hope Rowe Harris, Russell Bleecker, } Assignment of Error on
and Mark Baggalley, Appellants, } Appeal.
against
GEORGE R. BIDWELL, Appellee. }

And now, on this 21st day of February, 1899, come the appellants, William J. Cruickshank, Montague Hope Rowe Harris, Russell Bleecker, and Mark Baggalley, by John S. Davenport, Esq., of Davenport & Bull, their solicitors, and say that the decree dismissing the complaint in said cause is erroneous and against the just rights of the said appellants for the following reasons:

First. That the court erred in sustaining the demurrer and in dismissing the bill of complaint.

Second. That the court erred in making its decree dismissing the appellants' bill of complaint for the reason that the act of Congress approved by the President March 2, 1897, and entitled "An act to prevent the importation of impure and unwholesome teas," by

virtue of which the appellee claims the right to hold and destroy appellants' teas, is unconstitutional and void, and confers no authority upon the appellee and creates no right in the appellee to refuse to permit the appellants to take possession of the teas set forth in the bill of complaint, and to introduce them into and sell them in the United States.

Third. The court erred in dismissing the appellants' bill for the reason that the said act of Congress is unconstitutional and void, as purporting to authorize the respondent to deprive appellants of their property without due process of law.

Fourth. The court erred in dismissing the appellants' bill because it is apparent on the face of the bill that the respondent is not authorized by law to do any of the acts complained of in the bill of complaint.

Fifth. That the court erred in sustaining the demurrer of the appellee and dismissing the appellants' bill for the reason that the matters and facts alleged in the bill of complaint herein constitute a good and sufficient cause of action, and it appears on the face of said bill of complaint that the defendant, appellee, is unlawfully and without right interfering with and destroying the right of the complainants, appellants, to import and introduce the said teas into the United States, and is depriving the complainants, appellants, of the right to import teas into the United States, and that it appears on the face of said bill of complaint that the complainants, appellants, will suffer irreparable injury by the action of the defendant, appellee, and have no adequate remedy at law, and are entitled to a judgment enjoining the defendant, appellee, as prayed in the bill of complaint.

Wherefore the said appellants pray that the said decree dismissing the complaint may be reversed.

DAVENPORT & BULL,

*Solicitors for Appellants, 30 Broad Street, Borough of
Manhattan, the City of New York.*

(Endorsed :) Supreme Court of the United States. William J. Cruickshank *et al.* vs. George R. Bidwell. Assignment of error on appeal. Davenport & Bull, solicitors for appellants, 30 Broad street, New York city. U. S. circuit court. Filed Feb. 21, 1899. John A. Shields, clerk.

Circuit Court of the United States, Southern District of New York.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE ROWE HARRIS,	}
Russell Bleecker, and Mark Baggalley, Complainants,	
<i>against</i>	
GEORGE R. BIDWELL, Defendant.	}

The above-named complainants, conceiving themselves aggrieved by the decree made on the 17th day of October, 1898, and entered on the 21st day of November, 1898, in the above-entitled cause, do

hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in an assignment of errors which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, February 18, 1899.

DAVENPORT & BULL,
*Solicitors for Complainants, Appellants, 30 Broad Street,
Borough of Manhattan, the City of New York, N. Y.*

22 And now, to wit, on the 21st day of February, 1899, it is ordered that the appeal be allowed as prayed for.

E. H. LACOMBE,
U. S. Circuit Judge.

Due & timely service of a copy of the within is hereby admitted.
Dated New York, February 21st, 1899.

HENRY L. BURNETT,
Attorney for Def't Bidwell.

(Endorsed:) U. S. circuit court, southern district of New York. William J. Cruickshank *et al. vs.* George R. Bidwell. Notice of appeal. Davenport & Bull, solicitors for complainants, 30 Broad street, New York city. U. S. circuit court. Filed Feb. 21, 1899. John A. Shields, clerk.

23 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

WILLIAM J. CRUICKSHANK, MONTAGUE HOPE ROWE HARRIS, }
Russell Bleecker, and Mark Baggalley, Appellants, }
against
GEORGE R. BIDWELL, Respondent. }

Know all men by these presents that we, William J. Cruickshank and William A. Avis, both of the city, county, and State of New York, are held and firmly bound unto the above-named George R. Bidwell in the sum of two hundred and fifty dollars, to be paid to the said George R. Bidwell; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 21st day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas the above-named William J. Cruickshank, Montague Hope Rowe Harris, Russell Bleecker, and Mark Baggalley have prosecuted an appeal to the Supreme Court of the United States to reverse the decree overruling the demurrer rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

24 Now, therefore, the condition of this obligation is such that if the above-named William J. Cruickshank, Montague

Hope Rowe Harris, Russell Bleecker, and Mark Baggalley shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WM. J. CRUICKSHANK.
WILLIAM A. AVIS.

Sealed and delivered and taken and acknowledged this 21st day of February, 1899, before me—

A. E. HASKINS,
Notary Public, Kings Co.

Cert. filed in New York Co.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss :

William A. Avis, being duly sworn, deposes and says that he resides in the city of New York, is a freeholder, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WILLIAM A. AVIS.

Sworn to this 21 day of February, A. D. 1899, before me—

A. E. HASKINS,
Notary Public, Kings Co.

Cert. filed in New York Co.

(Endorsed:) Circuit court of the United States, southern district of New York. William J. Cruickshank *et al. vs.* George R. Bidwell. Bond on appeal to U. S. Supreme Court. Davenport & Bull, solicitors for appellants, 30 Broad street, New York. Approved as to form and also as to sufficiency of sureties, with reservation, however, to the respondent of the right at any time to examine the sureties under oath touching their liabilities and financial condition generally. E. H. Lacombe, U. S. circuit judge. U. S. circuit court. Filed Feb. 21, 1899. John A. Shields, clerk.

26 UNITED STATES OF AMERICA, ss :

To George R. Bidwell, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 20th of March, eighteen hundred and ninety-nine, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William J. Cruickshank, Montague Hope Rowe Harris, Russell Bleecker, and Mark Baggalley are appellants and George R. Bidwell is appellee, to show cause, if any there be, why the decree overruling the demurrer in said notice of appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 21st day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed :) William J. Cruickshank *et al. vs.* George R. Bidwell. Citation on appeal. Davenport & Bull, solicitors for pl'ffs, app'l'ts, 30 Broad street, New York city. U.S. circuit court. Filed Feb. 21, 1899. John A. Shields, clerk.

Due and timely service of a copy of the within is hereby admitted.
Dated New York, Feb. 21, 1899.

HENRY C. BURNETT,
Att'y for Def't Bidwell.

27 UNITED STATES OF AMERICA, }
Southern District of New York, } ss :

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to twenty-six (26), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William J. Cruickshank, Montague Hope Rowe Harris, Russell Bleecker, and Mark Baggalley, appellants, against George R. Bidwell, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-third.

JOHN A. SHIELDS, *Clerk.*

[10-cent U. S. internal-revenue stamp, canceled Mar. 3, 1899. J. A. S.]

[Endorsed :) United States Supreme Court. William J. Cruickshank & *al. vs.* George R. Bidwell. Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No., 17,325. S. New York C. C. U. S. Term No., 740. William J. Cruickshank, Montague Hope Rowe Harris, Russell Bleecker, & Mark Baggalley, appellants, *vs.* George R. Bidwell, collector of customs for the port of New York. Filed March 17, 1899.